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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOEMI GALVEZ,

Plaintiff,

vs.

CITIBANK, NA,

Defendant.

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

1. **TCPA, 47 U.S.C. § 227**
2. **RFDCPA, Cal. Civ. Code § 1788**

(Unlawful Debt Collection Practices)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Noemi Galvez (Plaintiff), through her attorneys, alleges the following against Defendant Citibank, N.A., (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of

automatic dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission ("FCC").

2. Count II of Plaintiff's Complaint is based upon Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788, which prohibits debt collectors from engaging in abusive, deceptive and unfair practices in connection with the collection of consumer debts.

JURISDICTION AND VENUE

3. Jurisdiction of the court arises under 28 U.S.C. § 1331 and 47 U.S.C. § 227.
4. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District.
5. Defendant transacts business here; personal jurisdiction is established.

PARTIES

6. Plaintiff is a natural person residing in North Hollywood, Los Angeles County, California.
7. Plaintiff is a debtor as defined by *Cal. Civ. Code § 1788.2(h)*.
8. Defendant is a debt collector as that term is defined by *Cal. Civ. Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.
9. Plaintiff's alleged debt is money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction, which qualifies as "consumer debt," as defined by RFDCPA, Cal. Civ. Code §17882(f).

10. Defendant is a banking institution with its headquarters located in Sioux Falls, South Dakota. Defendant can be served with process at 701 East 60th Street, North Sioux Falls, SD 57104.

11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

12. Defendant was attempting to collect an alleged debt from Plaintiff.

13. On or about December 14, 2016, Defendant began placing calls to Plaintiff's cellular phone number (323) 273-8493, in an attempt to collect an alleged debt.

14. The calls mainly originated from (859) 309-5128 and (904) 586-4000. Upon information and belief, these numbers are owned or operated by Defendant.

15. On or about December 14, 2016, at 11:19 a.m., Plaintiff answered a call from Defendant; Plaintiff heard a pause before a collection agent began to speak, indicating the use of an automated telephone dialing system.

16. Plaintiff spoke with defendant's representative from telephone number (859) 309-5128. Defendant's agent informed Plaintiff that it was attempting to collect a debt.

17. During that call, Plaintiff unequivocally revoked consent to be called any further.

18. . Despite her request not to be contacted, Plaintiff continued to receive calls on her cellular phone from Defendant.

19. Between December 14, 2016 and January 17, 2017, Defendant called Plaintiff almost every day after she requested the calls to stop.

20. Plaintiff typically received between two (2) to four (4) calls per day to her cellular phone.

21. Between December 14, 2016 and January 17, 2017, Defendant contacted Plaintiff's cellular telephone approximately fifty-five (55) times even after having unequivocally revoked consent to be contacted.

22. The conduct was not only willful, but was done with the intention of causing Plaintiff such distress, so as to induce her to pay the debt.

23. As a result of Defendant's conduct, Plaintiff has sustained actual damages including but not limited to, embarrassment, emotional and mental pain and anguish.

24. Plaintiff is employed as a nursing assistant. Her job requires her to work twelve-hour shifts, three days a week, and has her cellular phone on her while on the job.

25. Due to Defendant's incessant calls, Plaintiff has received complaints, related to the phone calls, from her patients and supervisors.

26. Defendant's phone calls routinely interrupted Plaintiff while she was at work.

27. Plaintiff cannot leave her cellular phone on silent as she must attend to any phone calls for emergencies related to her young son or any other instances while she is working her twelve-hour shifts.

28. Defendant's conduct induced stress, anxiety, and embarrassment in her place of work.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

30. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

    a. Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

    b. Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

31. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars ($500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant

knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars ($1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II

(Violation of the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE § 1788)

32. Plaintiff incorporates herein by reference all of the above paragraphs of this complaint as though fully set forth herein at length.

33. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

   a. Defendant violated Cal. Civ. Code § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

   b. Defendant violated Cal. Civ. Code § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

      i. Defendant violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

      ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly;

iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt; and

34. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

35. As a result of the foregoing violations of the RFDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Noemi Galvez respectfully requests judgment be entered against Defendant Citibank, N.A. for the following:

A. Declaratory judgment that Defendant violated the RFDCPA;

B. Statutory damages of $1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices act, Cal. Civ. Code §1788.30(b);

C. Actual damages pursuant to Cal. Civ. Code §1788.30(b);

D. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collections Practices Act, Cal. Civ. Code §1788.30(c);

E. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);

F. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

G. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

Dated: May 18, 2017

By: */s/ Stuart Price*

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